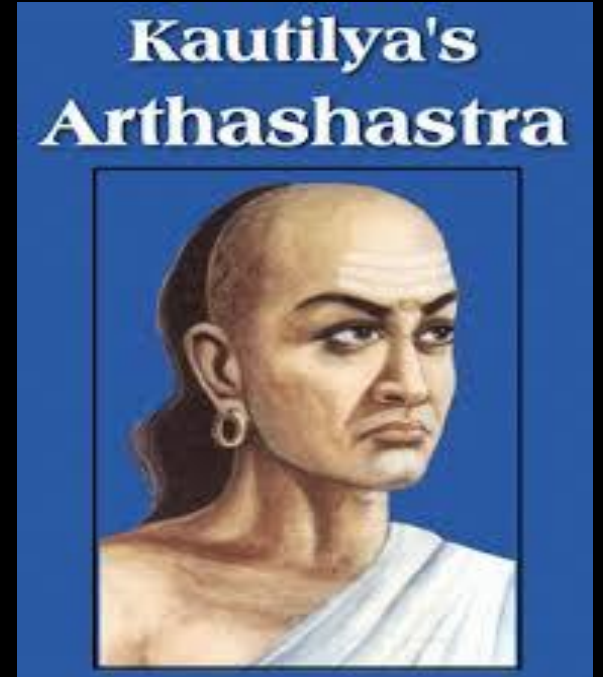


Contemporary Issues in Public Policy

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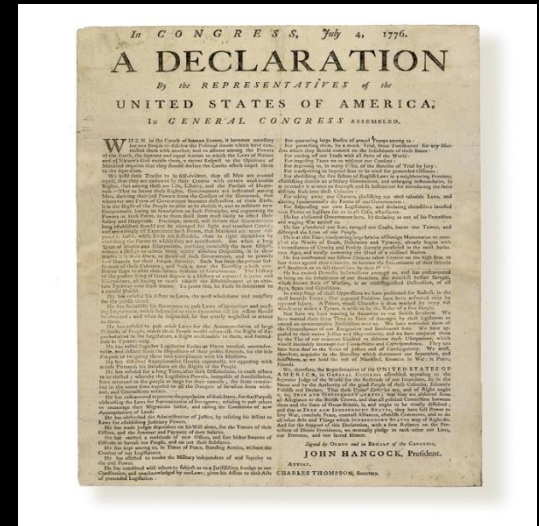
Review: How it began?

State Sciences: Serving the interests of the absolute ruler in knowing about the subjects of his principality and about the state of its resources. It was thus known as “state sciences,”



American Declaration of Independence (1776)

“We hold these truths to be self-evident, that all men [people] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”.



The National Assembly wrote their revolutionary ideals in the *Declaration of the Rights of Man and of the Citizen* which said:

“Men are born free and equal in rights”

Rights include “liberty, property, security, & resistance to oppression”

It guaranteed freedom of speech, & freedom of religion, & equal justice



French Revolution (1789) :Liberty, Equality and Fraternity



Oliver Wendell Holmes, Jr.

**“Your Liberty To Swing Your Fist
Ends Just Where My Nose Begins”**

It is this situation that created the demand for application of social knowledge furthering human cause

- Social knowledge for the purpose of social betterment
- Social knowledge would permit the gradual amelioration of social life.
- The object of social knowledge are the human and the community

Intervention in Public Affairs

Five BIG Overlapping Moments

- **Public Administration [Classical]**
- **Developmental Administration**
- **New Public Administration**
- **New Public Management**
- **Public Policy and Regulatory State**

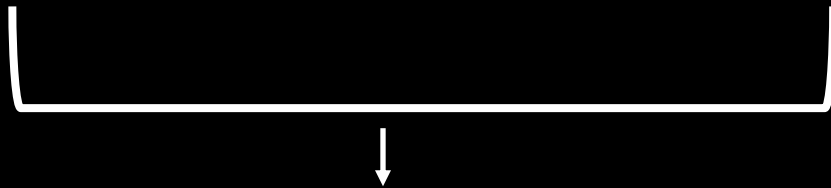
- **Moment I:**
- Public administration is what government does – conceiving, implementing and monitoring of government policies.
- Not studying phenomenon for its **own sake.**
- Policy problems were seen as **technical questions**, resolvable by the systematic **application of technical expertise.**

Moment – II- Development Administration

- Post Colonial Societies:
 - Underdevelopment, Poverty, Soft States
- The task was nation building, economic development , strengthening of the Institutions
 - Planning Commission
 - Scientific Institutions
 - Commission for Scheduled Castes and Scheduled Tribes was set (1978)
 - Community Development Programme (CDP)
 - Agriculture Extension Programmes

Moment III – Development and Administration is not Value neutral

The values of equity, responsiveness and administration **cannot be addressed by value neutral approach**. It alienated the less privileged and deprived



New Public Administration

Client Oriented Administration
Non-Bureaucratic Structures
Participatory Decision Making
Decentralized Administration

Case Study

- Polio Drops in Bihar
- Non Availability of Formal Credits

- Moment IV– Globalization, Economic Integration, State Failure/ Capture
Widening Disparity and Poverty



New Public Management



- Fundamental Rethinking: Government Steering, Rather than Rowing
- Empowering rather than Serving
- Market Oriented – corporatization of public services
- Government to Governance

- **Moment V– Regulatory State**

- Public Policy : Beyond Government
- Modern states are placing more emphasis on Regulation
 - the use of authority, rules and standard-setting
 - Displacing an earlier emphasis on public ownership, public subsidies, and directly provided services
 - Bureaucratic functions of regulation are being separated from service delivery.
 - the regulatory functions of government are being separated from policymaking functions

- **Tensions**

State and Public Purpose

1. Land Acquisition and Principle of Public Purpose

- All lands which are not privately owned by the individuals are owned by the state but in respect of privately owned lands the state has eminent domain power
 - The power of the state to expropriate lands of individuals who, are not willing sellers, **it is based on the principle that interests of the whole community is greater than individual interest., that is, the power of Eminent Domain** (Articles 31-A and 300-A of Indian Const.)
 - Article 300A reduce the property right from the status of fundamental right and make it as a legal right(property right will be available against executive interference, but not against the legislative interference).
 - Article 31 - Such deprivation can only be for public purpose
 - Compensation for deprived property must be equivalent to the market value of the property acquired

Contd...1. Land Acquisition and Principle of Public Purpose

How is Public Purpose Defined?

SEZ Act (2005):

- Land were granted by the central government (to state or private players or collaboration between them) for carrying out economic activities within the nations and where firms were being offered number of tax, regulatory and infrastructure incentives to locate in these zones
- **Public Purpose: Economic Growth, Employment, Non farm Sector, Industrialisation , etc.**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARRA 2013):

- Social and Environment Impact Assessment mandatory
- Compensation for the owners : Four (Rural) and two time (Urban) of the market value
- In case of acquisition of land for use by private companies or public private partnerships, consent of 80 and 70 per cent respectively of the displaced people will be required
- When government declares public purpose and shall control the land directly, consent of the land owner shall not be required
- Forbids land acquisition when such acquisition would include multi-crop irrigated area.

Public Purpose : Defense, Infrastructure, Mining, Housing for Low Income Groups, Industrial Corridors, Strategic Reasons etc.

Contd...1. Land Acquisition and Principle of Public Purpose

Issues: How to retain a balance between economic growth, public purpose and interest of stakeholders related to the land

- Bill Requires Upfront compensation. There may be delays or demand for more compensation thereby mis-aligning the interest of the developer and landholders.
- Extractive / Top Down versus Bottom Up/ Participatory

State and Doctrine of Public Trust

Case Study I: Coal Mines



- Private Participation
- The Mines and Minerals (Development and Regulation) Act, 1948 which was subsequently replaced in 1957 provided that the central government will provide license of mining lease to any private party which it deems fit.

Coal – Public Ownership-I

The coking coal mines (nationalization) act, 1972



Public ownership of the mines; As per the specified formula compensation is paid to the erstwhile owners

The coal mines (taking over of management) act, 1973



Management is taken over the central government – Custodian general is Appointed

The coal mines (nationalization) act, 1973



Consolidates both the acts (1972-73); it allows private organisation engaged in steel production and power generation to lease coal mines

Regulatory Instruments:

Public Ownership, control by Ministry of Coal , Office of the Custodian General is the main regulator

Rules made by the central government for the judicious use of coal to be used in national interest

Coal – Public- Private Ownership-II

By the Coal Mines (Nationalisation) Amendment Act, 1976

Allow Private companies involved in Iron and Steel to mine coal.

By the Coal Mines (Nationalisation) Amendment Act, 1993

Allow private sector participation in Power Sector by allowing power plants and coal mines

Coal Mines (Nationalization) Amendment Act 1996

Allow Cement companies ; also to captive mine coal

Coal Mines (Special Provisions) Act 2015

Allow mining leases to successful bidders to ensure continuity in coal production



Coal – Public – Private Ownership-II

Regulatory Framework:

- It is set in motion by **The coal mines (nationalization) Amendment acts 1976, 1993, 1996**
- Public Ownership, control by Ministry of Coal , Office of the Custodian General is the main regulator
- Licences were granted to organizations engaged in Power Generation, Iron and Steel plants, Cement production

Regulatory Instruments: Rules made by the central government for the judicious use of coal to be used in national interest

The Coal Mines (Conservation And Development) Act, 1974

Manohar Lal Sharma vs The Principal Secretary & Ors.

The allocation of coal blocks made by the Central Government, according to petitioners, is illegal and unconstitutional *inter alia* on the following grounds:

- Violation of the principle of Trusteeship of natural resources by gifting away precious resources as largesse.
- Arbitrariness, lack of transparency, lack of objectivity and non-application of mind; and
- Allotment tainted with *mala fides* and corruption and made in favour of ineligible companies tainted with *mala fides* and corruption.
- Court declared the allocation of Coal Blocks based on recommendations made in all the 36 meetings of Screening Committee is illegal.

Case Study II : Property Rights in P&NG

Beginning in Public Ownership

The Petroleum Act, 1934

Regulates the import, transport, storage, production, refining and blending

The oilfields (Regulation and Development) Act, 1948

- Central Government has the power to grant mining leases and specify the manner in which licences are granted

Petroleum Mineral Pipelines (Acquisition of Right of user in Land) Act, 1962

- To provide for the acquisition of right of user in land for laying pipelines for the transport of petroleum and minerals and for matters related.

Regulatory Framework: Public Ownership and control

- Land is acquired through eminent domain, and this is not affected by the LARR 2013.

New Exploration Licensing Policy (NELP), 1997/98

- 100% FDI is allowed under NELP
- No mandatory state participation through ONGC/OIL
- Blocks to be awarded through open international competitive bidding
- Freedom to the contractors for marketing of crude oil and gas in the domestic market.

Regulatory Framework: Public and Private Partnership
Regulatory Institution : Central Government, Ministry

Hydrocarbon Exploration and Licensing Policy (HELP), 2016

- Provides uniform licensing system to cover all hydrocarbons under single licensing framework
- Marketing and Pricing freedom has been granted, subject to ceiling price

Regulatory Framework: Public and Private Partnership
Regulatory Institution : Petroleum and Natural Gas Regulatory Board

Case Study III: National Water Policy – 1987 and 2012



The NWP 2012 institutionalizes the idea, water as an economic resource

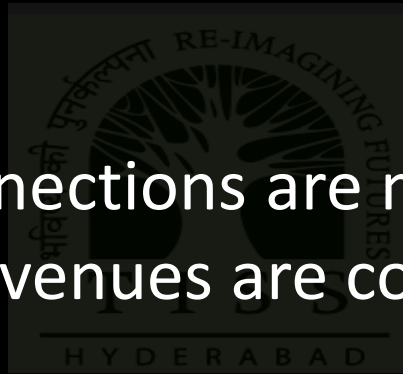
- National Framework Law as an umbrella statement of general principles governing the exercise of legislative and/or executive (or devolved) powers by the Centre, the States and the local governing bodies
- Thus water, particularly, groundwater, **is now being treated as economic resource to be managed as a common pool community resource held by the state under public trust doctrine**
- Pricing of water should ensure its efficient use and reward conservation.
- Equitable access to water for all and its fair pricing, for drinking and other uses such as sanitation, agricultural and industrial, should be arrived at through independent statutory Water Regulatory Authority, set up by each State, after wide ranging consultation with all stakeholders

- Recycle and reuse of water, after treatment to specified standards, should also be incentivized through a properly planned tariff system.
- Water Users Associations (WUAs) should be given statutory powers to collect and retain a portion of water charges, manage the volumetric quantum of water allotted to them and maintain the distribution system in their jurisdiction.

The Rationale for Restructuring Governance (Price) Regime in Water

(World Bank-2014)

- Service efficiency is weak, which means utilities have low cost recovery, further exacerbated by low tariffs that have little relation to operating costs.
- Only about 20 percent of connections are metered, and nonrevenue water—water for which no revenues are collected—averages over 40 percent in most cities.
- Challenges occur in a context of weak management systems and little data on existing assets, which makes it difficult to assess investment needs and time lines to improve service levels and operational efficiencies.
- Complex and fragmented institutions with little accountability



	Nagpur	Aurangabad	Mysore	Latur	Khndwa
Mandate	Rehabilitation+ Operations	Bulk+ Reconstruction	Reconstruction+ Operations	Operations+ Select Rectifications	Bulk+ Reconstruction+ Operations
Private Investment	30 %	50 %	Nil	Nil	10 %
Government Grant	UIG (70 %)	UIDSSMT+ State	UIG (90 %)	Nil	UIDSSMT (90 %)
Revenue	Fee/KL	Tariff+ Annual Subsidy	Management Fee	Tariff	Tariff
Current Status	WS system handed over	Preparatory Phase: WS system yet to be handed over	Rehab, O&M in progress	Under Suspension	Construction in progress
Accountability	Performance Standards and Linkage to Revenue				
Per Capita Supply	135 LPCD	110 lpcd	248 lpcd	100 LPCD	60-70 LPCD
Continuity of Supply	2–12 hours per day	45 minutes every second day	4.5 hours per day	Twice a week, 3–4 hrs. each time	Two to three times a week, for 30 minutes at a time
Coverage	80 %	NA	79%	47%	51 %
Operation Cost Recovery	59.7%	8.5%	51.7%	34%	13.3 %
Collection efficiency	73%	NA	Unclear	NA	50 %

UIG : Urban Infrastructure and Governance
UIDSSMT: Urban Infrastructure Development Scheme for Small and Medium Towns

Supreme Court Judgements, Policy Regimes and Emerging Consensus

- Constitution vests the natural resources within the territory of India with the Union.
- It is not “ownership” in the traditional sense as it is understood.
- It is not upto the complete discretion of the Government of the day on how to make use of the resources.
- In that sense **it is not a power** that is being vested on the Government.
- Rather, it is an **obligation or duty placed upon the Government** to make use of these resources in the manner prescribed by the Constitution
- Its “**rights**” as a property owner are circumscribed by this **Constitutional imperative of Part IV and the rights of the citizens under Part III of the Constitution.**
- In that sense, the **Government does not strictly “own” the property in the sense of how “ownership” is understood in the context of a private owner**

Brief Discussion

- State Imperative: Economic of Markets Vs. Politics of Democracy
- Shift in Property Regime and its Regulation.
 - Creating Newer Stakes (Land)
 - Creating Surplus Revenue
 - Access and its Problem (intersection of economic imperative and electoral compulsions)

Required Newer Understanding of Entitlements at the intersection of State, Markets and Civil-Political Society.

Challenge: How to incorporate this into the policy process?

Thank you !